

REMARKS

The Office Action dated January 24, 2008, has been received and carefully considered. Reconsideration of the current rejections in the present application is respectfully requested based on the following remarks.

I. THE OBVIOUSNESS REJECTION OF CLAIMS 1-11 AND 14-19

On page 2 of the Office Action, claims 1-11 and 14-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,625,118 to Hadi Salim et al. ("Hadi Salim") in view of U.S. Patent No. 7,035,220 to Simcoe ("Simcoe"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible

approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claim 1, the Examiner asserts that Hadi Salim discloses "determining a flow rate associated with a plurality of packets entering or exiting the network," as presently claimed. Applicant respectfully disagrees. In contrast, Hadi Salim merely discloses a packet flow control parameter generated by a packet flow control parameter generator in response to packet reading means for determining if the packet has been marked according to the Internet Protocol by any of the nodes through which the packet passed. Nowhere, does Hadi Salim disclose, or even suggest, "determining a flow rate associated with a plurality of packets entering or exiting the network," as

presently claimed. At best, Hadi Salim merely discloses detecting incipient congestion at a node (e.g., a router). Applicant respectfully submits that detecting incipient congestion at a node of Hadi Salim cannot be interpreted as a disclosure of "determining a flow rate associated with a plurality of packets entering or exiting the network," as presently claimed. Specifically, Hadi Salim discloses detecting incipient congestion at a node using a random early detection (RED) process, wherein the RED process monitors average queue lengths using a low pass filter. See, e.g., column 7, lines 7-13. Therefore, Applicant respectfully submits that Hadi Salim merely discloses monitoring average queue lengths to detect incipient congestion at a node and fails to disclose, or even suggest, "determining a flow rate associated with a plurality of packets entering or exiting the network," as presently claimed. Additionally, Hadi Salim discloses "preferably the packet flow control parameter comprises an offered window size, for indicating the source node how many packets can be sent before the source should wait for an acknowledgement from the receiver." See, e.g., column 3, lines 33-37. Therefore, the packet flow control parameter of Hadi Salim determines how many packets can be sent and not "determining a flow rate associated

with a plurality of packets entering or exiting the network," as presently claimed.

Also, the Examiner asserts that Hadi Salim discloses "marking at least one predetermined bit in at least one of the plurality of packets if the flow rate is greater than a predetermined rate," as presently claimed. Applicant respectfully disagrees. In contrast, Hadi Salim merely discloses if the congestion at router A is less severe, "it can mark the packet by setting the CE bit in the IP header." See, e.g., column 6, lines 6-9. Also, Hadi Salim discloses detecting congestion by determining "if the average queue length is greater than a minimum threshold." See, e.g., column 7, lines 23-24. Therefore, Applicant respectfully submits that Hadi Salim fails to disclose, or even suggest, "marking at least one predetermined bit in at least one of the plurality of packets if the flow rate is greater than a predetermined rate," as presently claimed. Additionally, Hadi Salim discloses at intermediate nodes, a flow is allocated a share of the capacity and "if the allocation is exceeded, a flag is set in each packet." See, e.g., column 1, lines 55-57. Thus, Applicant respectfully submits that nowhere does Hadi Salim disclose, or even suggest, allocating a share of the capacity is a disclosure of "a predetermined rate," as presently claimed.

In addition, the Examiner asserts, and Applicant agrees, that Hadi Salim fails to disclose, or even suggest, "initiating a flow packets across the network," as presently claimed. However, the Examiner asserts that Simcoe discloses "initiating a flow of packets across the network," and it would have been obvious at the time the invention was made to incorporate the teachings of Simcoe with Hadi Salim. Applicant respectfully disagrees. Applicant respectfully submits that Simcoe teaches away from Hadi Salim. Specifically, Applicant respectfully submits that Simcoe discloses intermediate nodes 210, and each intermediate node 210 "comprises a plurality of interconnected resources, including a processor 212, a memory 214 and an input/output device, such as a network interface 218." See, e.g., column 6, lines 46-49. In contrast, Hadi Salim discloses intermediate node A comprises a router which may mark a packet by setting the CE bit in the IP header. Therefore, Applicant respectfully submits that it would not have been obvious at the time the invention was made to incorporate the intermediate nodes of Simcoe for the intermediate nodes of Hadi Salim.

Regarding claims 2-11 and 14-17, these claims are dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claims 2-11 and 14-17 should also be allowable at least by virtue of their dependency

on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

Regarding claims 18 and 19, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 18 and 19. Accordingly, it is respectfully submitted that claims 18 and 19 are allowable over Hadi Salim in view of Simcoe for the same reasons as set forth above with respect to claim 1.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1-11 and 14-19 be withdrawn.

## II. THE OBVIOUSNESS REJECTION OF CLAIMS 12 AND 13

On page 5 of the Office Action, claims 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,625,118 to Hadi Salim et al. ("Hadi Salim") in view of U.S. Patent No. 7,035,220 to Simcoe ("Simcoe") further in view of U.S. Patent No. 6,483,805 to Davies et al. ("Davies"). This rejection is hereby respectfully traversed.

It is respectfully submitted that the aforementioned obviousness rejection of claims 12 and 13 has become moot in view of the deficiencies of the primary references (i.e., Hadi

Salim and Simcoe) as discussed above with respect to independent claim 1. That is, claims 12 and 13 are dependent upon independent claim 1 and thus inherently incorporate all of the limitations of independent claim 1. Also, the secondary reference (i.e., Davies) fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 1. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 1. Accordingly, claims 12 and 13 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 1. Moreover, claims 12 and 13 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 12 and 13 be withdrawn.

III. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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